SIM KOOI SOON A

v.

MALAYSIA AIRLINES SYSTEM (NO 2)

COURT OF APPEAL, PUTRAJAYA B
ABDUL MALIK ISHAK JCA
KANG HWEE GEE JCA
AZHAR MA'AH JCA
[APPLICATION NO: W-04-22-2005]
22 OCTOBER 2010 C

CIVIL PROCEDURE: *Judicial review - Application for - Filing of ten other review applications of the same nature - Seeking annulment of decisions of court - Whether an abuse of court process - Whether frivolous and baseless - Whether remedies sought misconceived and without any basis in law - Whether applicant should be declared a vexatious litigant* D

This was the applicant's application (encl. 154a) seeking to review the decision of this court handed down on 5 December 2006 dismissing his application to adduce further evidence as well as his appeal against the decision of the High Court. Prior to filing this E present application in encl. 154a, the applicant had filed ten other review applications of the same nature with minor variations. In the affidavit supporting encl. 154a, the applicant had cast aspersions against a former judge of the Federal Court as well as against a F senior member of the bar. On ten previous sittings of this court, the applicant's review applications were dismissed with costs and prayer (i) of encl. 154a also sought to annul the ten previous decisions of the court.

Held (unanimously dismissing encl. 154a with costs) G
Per Abdul Malik Ishak JCA delivering the judgment of the court:

(1) It was wrong in law to seek annulment of the ten previous decisions of this court and it was also an abuse of the process of this court. It was not only vexatious, it was also frivolous. H The averments in the applicant's affidavit could also be categorized as baseless, scandalous and vexatious with grave insinuations directed at a former judge of the Federal Court and against a senior member of the bar who was the respondent's counsel. The averments in the applicant's affidavit contained I unsubstantiated allegations. The attempt to annul all of the previous decisions of this court was a reflection of an attempt

A by the applicant to re-open the appeal and to re-litigate the same. The applicant's present application in encl. 154a was clear proof of his persistence and relentless effort in filing frivolous and vexatious applications of such nature. The remedies sought could best be described as misconceived and without any basis
B in law. (paras 12, 15 & 16)

(2) In the exercise of the powers conferred upon this court pursuant to art. 17 in the Schedule to the Courts of Judicature Act 1964, the applicant was hereby restrained from instituting any
C further legal proceedings in any court save by leave of the Court of Appeal and it was further ordered that a copy of this order be published in the gazette. As a serial litigator, it was justifiable that the applicant should be declared a vexatious litigant. If the applicant persists in instituting any further legal
D proceedings in any court without leave of the Court of Appeal, a contempt proceeding may be initiated against the applicant by the respondent and the applicant could find himself incarcerated. (para 29)

E ***Bahasa Malaysia*** *Translation Of Headnotes*

Ini adalah permohonan pemohon (lampiran 154a) yang memohon keputusan mahkamah ini yang telah diberi pada 5 Disember 2006 menolak permohonannya untuk mengemukakan keterangan tambahan dengan rayuannya terhadap keputusan Mahkamah Tinggi.
F Sebelum memfailkan permohonan ini di dalam lampiran 154a, pemohon telah memfailkan sepuluh permohonan kajian semula yang mempunyai sifat yang sama tetapi dengan beberapa perubahan kecil. Di dalam afidavit yang menyokong lampiran 154a, pemohon telah melemparkan fitnah ke atas bekas hakim Mahkamah Persekutuan
G dan juga terhadap ahli senior Majlis Peguam. Semasa kesepuluh-sepuluh persidangan mahkamah sebelum ini, permohonan kajian semula pemohon ditolak dengan kos dan tuntutan (i) lampiran 154a juga memohon untuk batal kesepuluh-sepuluh keputusan mahkamah sebelum ini.

H **Diputuskan (sebulat suara menolak lampiran 154a dengan kos) Oleh Abdul Malik Ishak HMR menyampaikan penghakiman mahkamah:**

I **(1)** Ia adalah salah dari segi undang-undang untuk memohon pembatalan kesepuluh-sepuluh keputusan mahkamah sebelum ini dan ia juga adalah satu salahguna proses mahkamah. Ia bukan hanya menyusahkan, ia juga adalah remeh. Hujahan-

hujahan yang terdapat di dalam afidavit pemohon boleh juga dikategorikan sebagai tidak berasas, memeranjatkan dan menyusahkan dengan sindiran yang serius terhadap seorang bekas hakim Mahkamah Persekutuan dan terhadap ahli senior Majlis Peguam iaitu peguam responden. Hujahan-hujahan yang terdapat di dalam afidavit pemohon mengandungi tuduhan-tuduhan yang tidak berasas. Percubaan untuk membatalkan keputusan-keputusan terdahulu mahkamah adalah satu bayangan percubaan pemohon untuk membuka balik rayuan dan melitigasi semula yang sama. Permohonan pemohon di dalam lampiran 154a adalah bukti jelas kegigihannya dan usaha tanpa belas kasihan dalam memfailkan permohonan-permohonan yang remeh dan menyusahkan. Remedi-remedi yang dituntut boleh disifatkan sebagai silap dan tidak berasas dari segi undang-undang.

(2) Mengikut pelaksanaan kuasa-kuasa yang diberi ke mahkamah di bawah perkara 17 Jadual kepada Akta Mahkamah Kehakiman 1964, pemohon dengan ini dihalang dari memulakan mana-mana prosiding undang-undang di dalam mahkamah kecuali dengan kebenaran oleh mahkamah rayuan dan ia juga diperintahkan bahawa salinan perintah ini diterbitkan dalam warta. Sebagai pembuat litigasi bersiri, ia wajar untuk pemohon diisytiharkan sebagai pembuat litigasi yang menyusahkan. Jikalau pemohon berterusan dalam memulakan prosiding undang-undang di dalam mahkamah tanpa kebenaran mahkamah rayuan, prosiding hina mahkamah akan dikenakan terhadap pemohon oleh responden dan pemohon boleh dikurung.

Case(s) referred to:

Hardial Singh Sekhon v. PP [2009] 5 CLJ 101 CA ***(refd)***

Sim Kooi Soon v. Malaysia Airlines System [2009] 1 LNS 1148 CA ***(refd)***

For the applicant - In person

For the respondent - Janice Anne Leo (Maximilian Tai with her); M/s Shook Lin & Bok

[Appeal from High Court, Kuala Lumpur; Application For Judicial Review No: R1-25-87-2001]

[Editor's note: For the High Court judgment, please see Sim Kooi Soon v. Malaysia Airline System [2005] 2 CLJ 797)

Reported by Suhainah Wahiduddin

JUDGMENT

Abdul Malik Ishak JCA:

[1] What is the hallmark of a vexatious litigant? The claimant who sues the same party repeatedly in reliance on essentially the same cause of action, perhaps with minor variations, is termed as a vexatious litigant.

[2] And a vexatious proceeding is one where the vexatious litigant had little or no basis in law and its effect was to subject the opposing party to inconvenience.

[3] In *Hardial Singh Sekhon v. PP* [2009] 5 CLJ 101, Gopal Sri Ram JCA (later FCJ) speaking for the Court of Appeal spoke of a vexatious litigant in this way (see p. 103 of the report):

> The appellant is a declared and gazetted vexatious litigant. He brought an election petition against the former Prime Minister and others claiming relief. The appellant did not obtain leave to bring the petition. Hence the petition was obviously unsustainable and was dismissed out of hand.

[4] On the appropriate sentence to mete out against Hardial Singh Sekhon, his Lordship Gopal Sri Ram JCA (later FCJ) had this to say at p. 103 of the report:

> After having heard the appellant and the learned deputy in reply, we came to the conclusion that the term of imprisonment imposed was excessive having regard to the nature of the contempt committed. While it is true that the court has power to impose a term of imprisonment upon a contemnor, the power is one that should be exercised with circumspection. In this case we agree that having regard to the defiant conduct exhibited by the appellant before the learned judge, imprisonment was well deserved. However, taking into account the obviously frivolous nature of the petition filed, the appellant's stand that he did what he did in the public interest, the appellant's age and the other circumstances of the case, including public interest, we considered a term of eight months imprisonment to be a more appropriate punishment. We therefore set aside the order of the judge and sentenced the appellant to eight months imprisonment.

[5] Sim Kooi Soon, you are a vexatious litigant. You keep on filing the same application one after another. You do not know when to stop. You exhibit the classic symptoms of a variant of *de Clerambault's* syndrome. It is a syndrome named after a French

psychiatrist, Ga tan de Clerambault who described such syndrome as "litigious behaviour" (see Baruk H, *"Les d lires passionels"* in (1959) 1 Trait de Psychiatrie at pp. 532-540 reproduced in *Themes and Variations in European Psychiatry* [1974] (editors Hirsch S and Shepherd M)). According to the French psychiatrist Baruk H, patients "... who undertake a series of lawsuits, the first leading to others along with numerous pleas and hearings ... become threatening and insulting and often denounce magistrates, lodge repeated complaints and sometimes become dangerous." The writer further explained that *de Clerambault's* syndrome does not involve hallucinations. Sufferers, according to the writer, display a vehement and passionate attitude of filing unsustainable claims against others.

[6] As a vexatious litigant you ignored orders from the court. You were advised to obtain leave from the Federal Court before you pursued the matter further. You were warned as to the consequences of being in contempt of court. In *Sim Kooi Soon v. Malaysia Airlines System* [2009] 1 LNS 1148; [2010] 1 AMR 219, this was what Dato' Abdul Malik bin Ishak JCA writing for the Court of Appeal said (see pp. 227 to 228 of the report):

> [13] We are constrained to say that this court has no jurisdiction to review its previous decision made on 5.12.2006 and the applicant is advised to file an application for leave to appeal to the Federal Court. That would be the best course of action for the applicant to undertake. Accordingly, enclosure 134a should be dismissed forthwith with costs bearing in mind that it has no merit and has no basis, in law, whatsoever.
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> [14] Lest I be accused of an oversight, I must venture further and I say that the persistent conduct of the applicant in filing eight (8) review applications prior to filing the present application in enclosure 134a peppered with "baseless, scandalous and/or vexatious aspersions and/or insinuations directed at the previous eight (8) panel members of the Court of Appeal" that have heard and dismissed all eight (8) review applications were done in bad faith and without regard to the consequences attendant thereto. Those unfounded allegations against the eight (8) panel members of the Court of Appeal are contemptuous in nature. We have wide and extensive contempt powers vested in us but, we will always exercise it cautiously, judiciously and not callously. As Lord President Clyde said in *Walter Lyulph Johnson v. John Grant And Others* [1923] S.C. 789, at page 790 which was cited with approval, *inter alia*, by Lord

Edmund-Davies in *Attorney-General v. Leveller Magazine Ltd. And Others, Attorney-General v. National Union of Journalists, Attorney-General v. Peace News Ltd And Others* [1979] AC 440, at page 459:

> The phrase 'contempt of court' does not in the least describe the true nature of the class of offence with which we are here concerned ... . The offence consists in interfering with the administration of the law; in impeding and perverting the course of justice ... . It is not the dignity of the court which is offended - a petty and misleading view of the issues involved - it is the fundamental supremacy of the law which is challenged.

[15] We say that "hurling insults at judges" as reflected in the affidavits of the applicant constitute "contempt in the face of the court". Wilmot J, in the celebrated case of *The King v. Almon* [1765] 97 ER 94, 1-3 Wilm. 243, 254, at page 99 in trenchant terms said:

> The power, which the Courts in Westminster Hall have of vindicating their own authority, is coeval with their first foundation and institution; it is a necessary incident to every Court of Justice, whether of record or not, to fine and imprison for a contempt to the Court, acted in the face of it.

[16] Even Lord Denning MR in *Morris And Others v. Crown Office* [1970] 2 QB 114, CA, at page 122, [1970] 1 All ER 1079, at page 1081 made these apt observations in the context of 'contempt in the face of the court':

> The phrase 'contempt in the face of the court' has a quaint old-fashioned ring about it; but the importance of it is this: of all the places where law and order must be maintained, it is here in these courts. The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our society. To maintain law and order, the judges have, and must have, power at once to deal with those who offend against it. It is a great power - a power instantly to imprison a person without trial - but it is a necessary power.

[17] Cases like *Ex parte Pater* [1864] 122 ER 842, 5 B & S 299; *The Queen v. Lefroy* [1872-73] 8 LRQB 134; *Sparks, & C v. Martyn* [1726] 1 & 2 Ventris 1; *Regina v. Monette* [1975] 64 DLR (3d) 470 at 474; *Her Majesty The Queen v. Kevin Ernest Dunning* [1979] 50 CCC (2d) 296, CA; *Canadian Broadcasting*

> *Corp v. Quebec (Police Commission), Canadian Broadcasting Corporation et al v. Cordeau et al* [1979] 101 DLR (3d) 24; *Vaillancourt v. The Queen* [1981] 120 DLR (3d) 740; and *The King v. Metal Trades Employers' Association And Others, Ex Parte Amalgamated Engineering Union, Australian Section* [1950-1951] 82 CLR 208, laid down one singular principle of law. It is this. That the power to punish contempt is an inherent power vested in all courts. We were urged, by way of an affidavit in reply, to take an appropriate action against the applicant for making those "baseless, scandalous and/or vexatious aspersions and/or insinuations directed at the previous eight (8) panel members of the Court of Appeal" but we decline, fortunately, to do so. We are of the considered view that we should temper justice with mercy. But this should not give a false impression that this court is lenient towards the applicant. Neither should our magnanimous gesture be construed as giving a carte blanche to the applicant to repeat what he has done. The applicant is advised from repeating the same mistake again.

[7] Unmeritorious claims and claims brought for improper reasons merely clog the court dockets. And such claims must be dismissed *in limine*. Byron C Keeling, *"Toward a Balanced Approach to Frivolous Litigation: A Critical Review of Federal Rule II and State Sanctions Provisions,"* 21 Pepp. L Rev 1067, 1134 [1994] aptly said:

> Judges perceive that a principal factor in the increasing size of their dockets is litigation abuse - in particular, frivolous filings.

[8] Apart from impacting the dockets and causing delays in the legal system, vexatious and frivolous suits consume substantial amounts of our scarce judicial time. As a vexatious litigant, you have filed numerous applications of the same nature. It has generated many hours of work by filing meaningless documents. Your antics have done little more than consume precious judicial time.

[9] Beyond the delay and the wastage of judicial time resulting from vexatious and frivolous applications, there are the costs incurred by the opposing parties who must defend against these applications. Vexatious proceedings are extraordinarily costly to the opposite parties, who needlessly incur added litigation expenses. Defendants named in vexatious and frivolous applications or suits have only two choices to resort to: firstly, expend money defending the application or suit; secondly, settle the application or suit for as small an amount as possible.

[10] Sim Kooi Soon, prior to filing the present application in encl. 154a, you have filed ten other review applications of the same nature with minor variations. In fact, together with encl. 154a, you have filed altogether 11 such review applications. In the affidavit supporting encl. 154a that was affirmed on 2 August 2010, you cast aspersions against a former judge of the Federal Court as well as against a senior member of the bar. You also painted in bad light the respondent's human resource manager.

[11] In your notice of motion in encl. 154a, you sought for the following prayers:

(i) Bahawa keputusan-keputusan Mahkamah hingga terkini adalah haram dan di'annulled'.

(ii) Pemohon/Perayu Sim Kooi Soon dibenarkan permohonannya yang dipohon.

[12] Basically, prayer (i) of encl. 154a sought to review the decision of this court on 5 December 2006 when this court dismissed your application to adduce further evidence as well as your appeal against the decision of the High Court dated 4 May 2005 (see *Sim Kooi Soon v. Malaysia Airlines System (supra)* at p. 223). On ten previous sittings of this court, your review applications were dismissed with costs and your prayer (i) of encl. 154a also sought to annul the ten previous decisions of this court. In our judgment, it is wrong in law to seek annulment of the ten previous decisions of this court and it is also an abuse of the process of this court and, consequently, it should be dismissed *in limine*. Today, your notice of motion in encl. 154a should be dismissed forthwith. It is not only vexatious, it is also frivolous.

[13] In your affidavit affirmed on 2 August 2010 in support of encl. 154a, you sought re-instatement of your previous position as captain/commander of the respondent's aircraft. You also prayed for an order that the respondent would train you as an Airbus A380 commander to successful completion at no cost to yourself and then employ you in that capacity till legal retirement age. You also sought back wages, benefits of every imaginable kind as well as the perks, privileges and benefits derived from MAPA's Agreement with the respondent. You also sought for general and aggravated damages to the tune of RM8 billion.

[14] It is our judgment that the averments in your affidavit and the matters raised therein are irrelevant and extraneous to your application in encl. 154a.

[15] It is also our judgment that the averments in your affidavit can also be categorised as baseless, scandalous and vexatious with grave insinuations directed at a former judge of the Federal Court and against a senior member of the bar who happens to be the respondent's counsel. The averments in your affidavit too contained unsubstantiated allegations which you relied upon as the purported reasons or justifications to annul the ten previous decisions of this court. The attempt to annul all the previous decisions of this court is a reflection of an attempt by you to re-open the appeal and to re-litigate the same.

[16] Your present application in encl. 154a is clear proof of your persistence and your relentless effort in filing frivolous and vexatious applications of such a nature.

[17] And the remedies which you sought can best be described as misconceived and without any basis in law.

[18] Since this court had dismissed your appeal on 5 December 2006 there is nothing for you to stand onto. Your foundation, so to speak, collapsed like a deck of cards when this court dismissed your appeal on 5 December 2006.

[19] Your tenth review application that was filed on 19 February 2010 was heard by this very panel on 13 May 2010 and you decided to withdraw the review application marked as encl. 147a and this very panel forthwith dismissed encl. 147a with costs. This very panel also advised you to file an application for leave to appeal to the Federal Court.

[20] The appellant in *Hardial Singh Sekhon v. PP (supra)* was "a declared and gazetted vexatious litigant" and a charge of contempt was framed against him by the High Court and the High Court found him guilty of contempt and sentenced him to 12 months imprisonment. On appeal, Gopal Sri Ram JCA (later FCJ) speaking for the Court of Appeal reduced the sentence of imprisonment to 8 months.

[21] We do not want you to suffer the same fate as Hardial Singh Sekhon. We advise you, once again, to file an application for leave to appeal to the Federal Court.

[22] You have shown no remorse nor do you respect this court. You persist in making baseless and scandalous allegations against the respondent and the judiciary. Such blatant and contemptuous acts cannot go unpunished nor can it be swept under the carpet.

[23] On 21 October 2010 at about 4.45pm, we were handed an affidavit in reply affirmed by your goodself on 21 October 2010 and that affidavit in reply was marked by the registry as encl. 159.

[24] We have anxiously perused through your affidavit in reply in encl. 159 and we noted that just because the respondent's solicitors Messrs Shook Lin & Bok had on, 20 August 2010, filed an application in the Kuala Lumpur High Court *vide* Originating Summons No: S24-1874-2010 for, *inter alia*, an order that you be declared a vexatious litigant and an order that you be restrained from initiating any legal action except with leave of the court, you now seek the aid of this court to cite all the advocates and solicitors in Messrs Shook Lin & Bok for contempt.

[25] We also noted that the Kuala Lumpur High Court *vide* Originating Summons No: S24-1874-2010 has yet to be fixed for hearing.

[26] In your affidavit in reply in encl. 159, you continuously made baseless and scandalous allegations against the law firm of Messrs Shook Lin & Bok which we do not propose to reproduce them in this judgment. Suffice for us to say that uncalled for remarks were made by you against the law firm of Messrs Shook Lin & Bok.

[27] We have to put an end to your incessant review applications.

[28] We will now refer to art. 17 in the Schedule to the Courts of Judicature Act 1964 which states as follows:

> 17 Vexatious litigants
>
> Power to restrain any person who has habitually and persistently and without reasonable cause instituted vexatious legal proceedings in any court, whether against the same or different persons, from instituting any legal proceedings in any court save by leave of a Judge. A copy of any such order shall be published in the Gazette.

[29] And flowing from that we now make an order that in the exercise of the powers conferred upon this court pursuant to art. 17 in the Schedule to the Courts of Judicature Act 1964, you Sim Kooi Soon is hereby restrained from instituting any further legal proceedings in any court save by leave of the Court of Appeal and it is further ordered that a copy of this order be published in the Gazette.

[30] As a serial litigator, it is justifiable that you Sim Kooi Soon should be declared a vexatious litigant and we reiterate that a gazette notification will issue to declare you as such. Let it be known that if you persist in instituting any further legal proceedings in any court without leave of the Court of Appeal, a contempt proceeding may be initiated against you by the respondent and you will find yourself incarcerated just like Hardial Singh Sekhon.

[31] For the reasons adumbrated above, we unanimously dismiss encl. 154a with costs. We fix costs at RM10,000 and it is to be paid by you to the respondent forthwith.